



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

L. Preston Bryant, Jr.
Secretary of Natural Resources

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David K. Paylor
Director

Steven A. Dietrich
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO THE LESTER GROUP, INC.

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d) by the Board to The Lester Group, Inc., for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "TLG" means The Lester Group, Inc., a Virginia corporation registered under Corporate ID No. 0015254-6.
7. "Corps" means the U. S. Army Corps of Engineers.
8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. "Regulation" means the Virginia Water Protection Permit Program Regulation, 9 VAC 25-210-10 *et seq.*

10. "VWP Permit" means a permit issued under the Regulation for wetlands or perennial stream impacts.
11. "KMRP North Site" means construction project planned to encompass approximately 35 acres on Henry County Parcel No. 131010013. This parcel is owned by TLG and is adjacent to the west site of the Henry County Closed Sanitary Landfill. This parcel further described at Henry County Deed Book 73, page 595.

SECTION C: Findings of Fact and Conclusions of Law

1. On August 29, 2006, WCRO staff observed grading work occurring at the KMRP North Site during a planned sampling inspection of the Henry County Closed Sanitary Landfill. Based upon historical knowledge of the landfill and the adjoining property, it appeared that a stream had been filled during grading. TLG staff reported that they believed they were in compliance having received permits and approvals from the department of Conservation and Recreation (DCR) and Henry County authorities and did not intend to violate the law.
2. On September 8, 2006, WCRO staff conducted a compliance inspection of the KMRP North Site. WCRO staff re-inspected the KMRP North Site with Thom Leedom of the U.S. Army Corps of Engineers on September 25, 2006.
3. Results of the September 8 and 25 inspections indicate that fill material was discharged into approximately 800 linear feet of a perennial stream bed at the KMRP North Site. In addition, a small pond that was intended for storage of water for withdrawals for dust suppression has been installed in a second stream at the KMRP North Site by filling and excavating the stream bed. This pond was removed in January 2007.
4. Despite TLG's interaction with DCR and Henry County authorities, DEQ has not issued a VWP Permit to TLG for authorization for construction activities or discharge of dredged or fill materials to state waters at the KMRP North site. TLG has not submitted an application for such a permit to DEQ.
5. Code § 62.1-44.5.A states that

Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Excavate in a wetland; 3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; or 4. On and after October 1, 2001, conduct the following activities in a wetland: a. New activities to cause draining that significantly alters or

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degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that caused significant alteration or degradation of existing wetland acreage or functions.

6. On October 11, 2006, DEQ issued Notice of Violation No. 06-10-WCRO-001 to TLG for causing stream impacts at the KMRP North Site without a VWP permit in violation of Code § 62.1-44.5, Code § 62.1-44.15:5, and 9 VAC 25-210-50.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code §62.1-44.15(8a) and (8d), the Board orders TLG and TLG agrees, to perform the actions described below and in Appendix A of this Order. In addition, the Board orders TLG, and TLG voluntarily agrees, to pay a civil charge of \$13,000.00 within 30 days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, VA 23218

The payment shall include TLG's Federal Identification Number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of TLG, for good cause shown by TLG, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (a) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (b) seeking subsequent remediation of the facility as may be authorized by law; or (c) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, TLG admits the jurisdictional allegations in this Order, but does not admit the factual allegations or legal conclusions contained herein. The Department and TLG agree that the actions undertaken by TLG in accordance with this consent order do not constitute an admission of any liability by

TLG. TLG does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the findings or conclusions contained in Section C of this Order.

4. TLG declares that it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.* and the State Water Control Law, Va. Code § 62.1-44.2 *et seq.* and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and agrees to waive any objection to, or appeal from, the entry of this Order. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or judicial review of, any action taken by the Board to enforce this Order.
5. Failure by TLG to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. TLG shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. TLG shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. TLG shall notify the WCRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth: (a) the reasons for the delay or noncompliance; (b) the projected duration of any such delay or noncompliance; (c) the measures taken and to be taken to prevent or minimize such delay or noncompliance; and (d) the timetable by which such measures will be implemented and the date full compliance will be achieved. Failure to so notify the WCRO Regional Director within twenty-four hours of learning of any condition above, which TLG intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.
8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and TLG. Notwithstanding the foregoing, TLG agrees to be bound by any compliance date in Appendix A of this Order that precedes the effective date of this Order.

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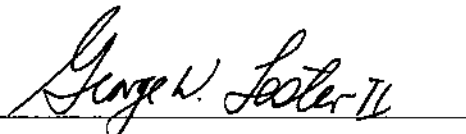
10. Any plans, reports, schedules or specifications attached hereto or submitted by TLG and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
11. This Order shall continue in effect until: a) TLG petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of this Order, b) the Director or Board terminates the Order in his or its sole discretion upon 30 days notice to TLG, whichever occurs earlier. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve TLG from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. The undersigned representative of TLG certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind TLG to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of TLG.
13. By the signature of an authorized official below, TLG voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 28th day of JUNE, 2007.



Steven A. Dietrich, Regional Director
West Central Regional Office
Department of Environmental Quality

TLG voluntarily agrees to the issuance of this Order.

By: 

Commonwealth of Virginia

City/County of MARTINSVILLE

The foregoing document was signed and acknowledged before me this 29th day of

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MAY, 2007, by George W. Lester II, who is President of
The Lester Group, Inc.

Janet M. Decker
Notary Public

My commission expires: 3/31/08



APPENDIX A SCHEDULE OF COMPLIANCE

1. Except in compliance with a VWP permit, TLG shall not dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical or biological properties of surface waters, excavate in wetlands, or conduct the following activities in a wetland: a) New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b) Filling or dumping; c) Permanent flooding or impounding; d) New activities that cause significant alteration or degradation of existing wetland acreage or functions.
2. Not later than June 25, 2007, TLG shall submit for review and approval a Concept Compensation Plan for the KMRP North Site containing all information listed in the "Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities," 9 VAC 25-690. The compensation plan and schedule shall comply with the requirements of the following provisions: 9 VAC 25-690.A.16 and 20 (concept compensation plans), 9 VAC 25-690-70 (compensation requirements), 9 VAC 690-100.II.A (minimum compensation requirements), 9 VAC 690-100.II.D (compensation, restoration, and monitoring), and 9 VAC 690-100.II.E (reporting). One factor in determining the required stream compensation shall be an analysis of stream impacts utilizing a stream impact assessment methodology acceptable to DEQ.
3. Within 90 days of the later of either a) the approval by DEQ of the Concept Compensation Plan required under Paragraph 2 above, or, b) the effective date of this Order, TLG shall submit for review and approval a complete and approvable final compensation plan and schedule for the KMRP North Site containing all information listed in the "Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities," 9 VAC 25-690. The compensation plan and schedule shall comply with the requirements of the following provisions: 9 VAC 25-690.A.16 and 20 (concept compensation plans), 9 VAC 25-690-70 (compensation requirements), 9 VAC 690-100.II.A (minimum compensation requirements), 9 VAC 690-100.II.D (compensation, restoration, and monitoring), and 9 VAC 690-100.II.E (reporting). One factor in determining the required stream compensation shall be an analysis of stream impacts utilizing a stream impact assessment methodology acceptable to DEQ. TLG shall comply with the approved compensation plan and schedule for the KMRP North Site.
4. TLG shall respond to any written comments from DEQ regarding plans submitted under Paragraphs 2 or 3 above within 20 days of receipt of such comments.